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Northern District of California
San Jose

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

LHK

TODD REGNIER, DDM, Applicant, vs. RATEMDS, Inc., a California corporation, Respondent.	CASE NO. MISC CV 13 80147 MISC. HRL **APPLICATION FOR ORDER TO TAKE THIRD PARTY DISCOVERY VIA SUBPOENA PURSUANT TO 28 U.S.C. § 1782** **[PROPOSED ORDER FILED CONCURRENTLY HEREWITH]**

APPLICANT TODD REGNIER, a Doctor of Dental Medicine practicing in Victoria, British Colombia, Canada (hereinafter "Applicant"), alleges as follows:

JURISDICTION

1. The jurisdiction of this Court over the subject matter of this Application is predicated upon 28 U.S.C. §1331 and 28 U.S.C. §1782. Applicant is a resident of Canada. Applicant seeks the issuance of a subpoena for records and documents, including electronically stored information, to Respondent RATEMDS, Inc. (hereinafter "Respondent"), which Applicant is informed and believes, and thereon alleges, is a corporation organized under the laws of the State of California, with its principal place of business in San Jose, California. Applicant seeks discovery relative to a legal proceeding pending before the Supreme Court of British Columbia, Victoria, British Columbia, Canada, entitled *Todd Regnier and Jane Doe*, Court File Number VIC-S-S-131291.

2. Intradistrict Assignment. Venue is proper in the Northern District, San Jose Division, pursuant to Civil L.R. 3-2(c), because many of the events or omissions giving rise to this Application arose in this District, and Respondent, Applicant is informed and believes, and thereon alleges, has its principal place of business in the City of San Jose, County of Santa Clara. Moreover, Applicant seeks the discovery of information held or controlled by Respondent from its principal place of business.

PROCEDURAL AND FACTUAL ALLEGATIONS

3. Applicant hereby applies to the Court for an order pursuant to 28 U.S.C. §1782 and Rules 26, 30, 34 and 45 of the Federal Rules of Civil Procedure, granting Applicant leave to serve Respondent, RATEMDS, Inc., a California corporation, which has a business address of 2828 Westberry Drive, #8, San Jose, CA 95132, with the subpoena attached as Exhibit A to the accompanying Proposed Order.

4. Title 28 U.S.C. §1782 allows litigants in foreign proceedings to seek and obtain discovery from persons and entities residing or found in the United States for use those proceedings before a foreign tribunal. To obtain an order for such discovery, an application under §1782 must show:

(a) the person or entity from which discovery is sought resides or is found in the district of the district court to which the application is made;

(b) the requested discovery is for use in a proceeding before a foreign tribunal; and

(c) the party requesting the discovery is an "interested person" with respect to the foreign proceeding.

5. This Application meets these requirements. First, the requested discovery is for use in connection with a civil action being prosecuted by Applicant in Supreme Court of British Columbia, in Victoria, British Columbia, Canada: (a) on April 8, 2013, Applicant filed a Notice of Civil Claim (Court File Number VIC-S-S131291) in the aforementioned foreign court for defamation and other damages against a yet unidentified person or persons who posted untrue and damaging comments regarding Applicant, Dr. Regnier, on the Internet site www.RateMDs.com, on or about January 29, 2013, which Applicant is informed and believes, and thereon allegeds, is owned and operated by Respondent, RATEMDS, Inc.

6. Second, Applicant is an interested party in the aforementioned foreign tribunal proceeding because he is a named party in said aforementioned foreign civil proceeding.

7. Third, the discovery requested under the proposed subpoena is directly related to, and for use in, each of the aforementioned foreign civil proceeding currently pending in the Supreme Court of British Columbia, Victoria, British Columbia, Canada, as set forth in detail below.

Background

8. Applicant, Todd Regnier, is a Doctor of Dental Medicine and a practicing dentist, who resides in Victoria, British Columbia, Canada. Applicant's place of business is the Bayshore Dental Centre, 115-1150 Douglas Street, Victoria, British Columbia, Canada.

9. On or after January 29, 2013, Dr. Regnier learned that there was a false and defamatory posting under his name on the website www.RateMDs.com, which, upon information and belief, is owned and operated by Respondent RATEMDS, Inc. of San Jose, California.

10. www.RateMDs.com publishes ratings of physicians on a scale of 1 to 5 (1 being the worst; 5 being the best) and postings by named and anonymous individuals about physicians and dentists. Postings are published from, *inter alia*, the United States, the United Kingdom and Canada.

11. On or about January 29, 2013, under Dr. Regnier's name, the following anonymous posting was listed on www.RateMDs.com:

"I was new to this office a couple of months ago, and I will never go back. Front desk staff are absolutely impolite/brusque/rude. Back end staff (assistants/hygienists) are endlessly tormented by Todd and his colleague Sunny Tatra DURING PROCEDURES. Awful for me the patient. While he was working on my filling, he sent his hapless assistant THREE TIMES to deliver a "joke" or "punchline" to Sunny. They were not focussed on the patients at all, just their banter. THEN: WORST OF ALL: he tells the girl to go to lunch, & instructs her to place all the items he'll need for my filling (instruments, etc) on my BREASTS (which are large). Girl does & leaves & Todd spent the next 20 minutes picking things up off my nipples and chest area. This has never happened to me before, and when I left this office and started at a new great place downtown the new dentist was shocked that this had happened to me. Todd is mean and gross. (& I had to have the filling redone as well: fell out after 2 weeks!)"

(See, Exhibit A, attached hereto.)

12. The above statement is false and defamatory. The anonymous poster attacked Applicant's reputation and character, including his ability, competence, professionalism and morality.

The Subject Subpoena

13. By the subject subpoena, Dr. Regnier seeks to discover the identity of the person or persons who posted false and defamatory comment about him and his dental practice on www.RateMDs.com on or about the following date: January 29, 2013.

Legal Authority

14. Title 28 U.S.C. § 1782 provides for discovery in the United States to assist foreign tribunals and litigants before foreign tribunals. It states in pertinent part:

> (a) The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal. . . The order may be made. . . upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court.

15. These threshold requirements are met here. First, Applicant is an interested party in a foreign proceeding because he is either a party or a prospective party to the proceeding. *Intel Corp. v. Advanced Micro Devices*, 542 U.S. 241, 243-244 (2004).

16. Second, the requested discovery is for use in conjunction with a proceeding before a foreign tribunal. See, *In Re Linerboard Antitrust Litig*., 333 F.Supp.2d 333 (E.D. PA 2004) (discovery authorized under §1782 for use in connection with claims being asserted in a foreign court).

17. Third, RATEMDS, Inc., a California corporation, is within the jurisdiction of this Court and is subject to this Court's authority with respect to the requested discovery.

18. If the threshold requirements are met, a district court may order a person or entity residing within its district to produce documents for use in a foreign legal proceeding, unless it would violate a legal privilege. In considering whether to grant such a request, a district court should weigh the factors set forth in *Intel*, being: (1) whether the "person from whom discovery is sought is a participant" in the foreign case; (2) the nature and character of the foreign proceeding, and whether the foreign court is receptive to judicial assistance from the United States; (3) whether the discovery request is an attempt to avoid foreign evidence-gathering restrictions; and (4) whether the discovery request is "unduly intrusive or burdensome." *Intel Corp., supra*, 542 U.S. at 264-266.

19. Here, discovery is sought from an entity not a participant in the Canadian litigation, making the need for the aid provided by §1782 more apparent. The foreign proceeding at issue is a Canadian civil action, which United States courts have long recognized are within the meaning of § 1782. With regard to the third *Intel* requirement, the discovery sought by this Application is for the express purpose of applying, not undermining, the rule of law in the foreign proceeding. Finally, the requested discovery falls squarely within the parameters of the discovery assistance §1782 was intended to facilitate.

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WHEREFORE, Applicant Todd Regnier, DDM, respectfully prays that this Court enter an Order:

A. Granting Applicant's Application for Discovery from Respondent RATEMDS, Inc. pursuant to 28 U.S.C. §1782;

B. Authorizing Applicant to issue to Respondent RATEMDS, Inc., pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, a subpoena for the production of documents and things in the form attached to the Proposed Order as Exhibit A;

C. Authorizing Applicant to issue to Respondent RATEMDS, Inc., pursuant to Rule 45 of the Federal Rules of Civil Procedure, subpoenas for the production of additional documents as Applicants deem reasonably appropriate based upon review of the initial documents and information produced by Respondent;

D. Appointing Marc A. Karlin, a member of the bar of this Court, to issue, sign and serve such subpoena(s) upon Respondent RATEMDS, Inc.

Respectfully submitted,

Date: June 27, 2013

KARLIN & KARLIN
A PROFESSIONAL LAW CORP.

By [signature]
MARC A. KARLIN
Attorneys for Applicant

EXHIBIT A

Dr. Todd Regnier

Dr. Todd Regnier

Dentist

Location: Victoria, BC
Gender: Male
Specialty: Dentist
Website: frommers.com/destin...
Practice: Regnier Todd Dr Inc
Hospital:
Phone: 250-381-6433
Med. School:
Grad. Year:

Dentist-related: cavities, gum disease, teeth cleaning, dental care, gingivitis

Answers Email:
Online Appt. Scheduling:
Accepting New Patients: Yes

Rating: 3.9 out of 5 (5 is best), based on 26 reviews.

Add Rating | Add Link | Add Picture | Update Doctor's Listing

Doctors, add our positive ratings to your website!

The following ratings and comments have not been substantiated by RateMDs.com.

Show Ratings Key & Categories

Recommend 0 0 Save

	Date	STAFF	PUNCTUAL	HELPFUL	KNOWLEDGE	Comments	
*	3/24/13	5	4	5	5	I have known Dr. Regnier for 15 years. I hated my smile because of my crowded small teeth and more so after I lost a few and had to have a partial denture with visible clasps. Another Dentist said that nothing could be done to improve my smile short of using implants. Dr. Regnier worked out a way with veneers, bridges, and crowns to transform my smile. That was 12 years ago and still everything looks great. Very often when I meet old friends who haven't seen me in awhile they always say that I look great but are not sure why at first. After a few good laughs and smiles they realize that my teeth look great. The procedure took many visits to complete and I like that Dr. Regnier jokes around with his staff to keep things light while at the same time totally focusing on doing a great job. My only criticism is that he doesn't give out more free bottles of wine for all the referrals I have sent his way. Strongly recommend him. Open Saturdays is another bonus. Insurance: Blue Cross / Blue Shield	Respond
*	3/18/13	5	4	5	5	I have been a patient of Dr. Regnier's for almost 20 years. My entire family sees him along with many of our friends. My kids have grown up at Bayshore and the trust that they have in him alone is priceless. No one in my family likes needles and besides going slowly and patiently he also offers sedation for longer tougher procedures. We all miss his receptionist Dianne who was with him for almost 15 years before moving back East but all of his staff are friendly and try hard to please. He is committed to quality dentistry and charges the fee guide fees which keeps our dental bills as low as possible. He told me that he will be our Dentist for at least the next 20 years and I think that is mainly because he enjoys his job. Me and my family strongly recommend Dr. Todd	Respond
*	3/13/13	5	4	5	5	I have been seeing Dr Regnier for 10 years and he is the best dentist I've ever had. I am very scared of dentists as I have had bad experiences in the past. Before seeing Dr Regnier I hadnt been to the dentist in 10 years (after the last	Respond

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Date					Review	
					bad experience) but I saw him and he got me through my dental anxiety and fixed my teeth! He has always been kind, understanding and great at getting me through the work that I've needed. Best dentist in Victoria.	
3/1/13	5	4	5	5	I have been a satisfied patient of Dr Regnier's for several years. I came in with a toothache and he stayed late to get me out of pain and I have been coming to see him reguarly ever since. I find him meticulous, kind and he goes the extra mile to do the best job possible. My family has swtiched to see him and we will continue to see him as he is the best dentist around. Highly recommended.	Respond
1/29/13	1	1	1	1	I was new to this office a couple of months ago, and I will never go back. Front desk staff are absolutely impolite/brusque/rude. Back end staff (assistants/hygienists) are endlessly tormented by Todd and his colleague Sunny Tatra DURING PROCEDURES. Awful for me the patient. While he was working on my filling, he sent his hapless assistant THREE TIMES to deliver a "joke" or "punchline" to Sunny. They were not focussed on the patients at all, just their banter. THEN: WORST OF ALL: he tells the girl to go to lunch, & instructs her to place all the items he'll need for my filling (instruments, etc) on my BREASTS (which are large). Girl does & leaves & Todd spent the next 20 minutes picking things up off my nipples and chest area. This has never happened to me before, and when I left this office and started at a new great place downtown the new dentist was shocked that this had happened to me. Todd is mean and gross. (& I had to have the filling redone as well: fell out after 2 weeks!)	Respond
2/14/12	1	4	1	2	Seen this doctor several times, first time was a very neutral visit which i didn't mind, since i'm not big on small talk, when people are performing a task. The next visits with Dr. Regnier he was highly rude, very brash and short. Not something you expect after paying a several hundred dollars for dental work. would highly not recommend	Respond
10/2/11					SYSTEM: 2 positive duplicate or disallowed ratings automatically removed	
9/19/11					SYSTEM: 2 positive duplicate or disallowed ratings automatically removed	
4/18/11					SYSTEM: 2 positive duplicate or disallowed ratings automatically removed	
2/16/11					SYSTEM: 3 negative duplicate or disallowed ratings automatically removed	
2/4/11	4	3	1	2	I'm so glad to hear that I'm not the only one treated badly by Dr. Regnier. Someone mentioned "off days", and I've experienced him on more of those than on good days. Staff told me that he is known for being "grumpy" (that's not the word for how he acts). He walked out on me when I expressed frustration about something, and I was told by staff that he wouldn't come back to talk to me - he never does. I saw him in the hallway after my appointment, and confronted him about walking away. He basically told me that he would never be able to make me happy because I have issues every time I come into the office. (Issues: he told me the drilling he was doing "wasn't that bad", he was berating his staff while working on my root canal, his tone was so harsh at one point it made me cry... just little issues, really). He may be a perfectionist, but his chair side manner is terrible, and his people skills are lacking. He is unable to express sympathy for his patients.	Respond
1/2/11	4	4	5	5	I've been going to Dr. Regnioer for over 15 years and consider him to be the best dentist ever - knowledgeable, kind, gentle, polite, and always informative.	Respond
10/18/10	5	4	5	5	Due to an unusual nerve configuration, various dentists have often found it challenging to get some areas of my mouth "frozen". Consequently I am quite anxious when I visit any dentist and need to develop a high level of trust in them. Dr Regnier has been my regular dentist for a number of years now and each time I go to see him I feel grateful for his patience, determination and care in making sure he gets a tooth adequately numb before he starts work on it, and for helping me with my anxiety by being gentle and reassuring. In all of my dealings with him he has always been easy to communicate with and totally professional and I have been very satisfied with his work.	Respond
9/2/10	5	4	5	5	Dr Todd was recommend by a dentist near my business who was leaving on vacation when I had a tooth ache. Did 2 root canals fgor me. Very happy with everything. Found his staff and himself welcoming, knowledgable, friendly and	Respond

						everything. I found his staff and himself welco[illegible]g, knowledgable, friendly and compassionate. Have moved to US now and [illegible]pe my new dentist I see today will be 1/2 as good so I'll be happy!	
6/11/10	5	3	5	5		Very patient, percise and an excellent communicator when he determined I wanted lots of info and asked lots of questions. I had an unusual problem (failed dental implant in place for 22 years) He was able to search out experts who were familiar with that type and tried several different approaches in the attempt to save the original jaw apparatus. This resulted in many trips but a complete success. The chair side assistants and office staff were helpful and friendly. I will recommend Dr. Reynier to my friends. As I live in Washington state, the trip to Victoria is convenient and the city is a delight to visit.	Respond
4/15/10	5	5	5	5		Todd is a great dentist. Always does a great job. I recommended him to all my friends. Thanks Todd for your excellent service!	Respond
4/14/10	5	5	5	5		Very likeable, good conversation, related well, listened. I felt confident in him... one of the top 2 dentists in my life, and I've seen maybe 9 or 10	Respond
2/23/10	4	5	5	5		He's been great as a family dentist for us. I think it's important to rembember when reading the nasty comments that some patients are incredibly rude and demanding, and often that type of person goes out of there way to complain.	Respond
12/17/09	5	5	5	5		An excellent Dentist. Thorough, gentle, very knowledgeable. Been going to him for over 10 years. Great sense of humour.	Respond
12/15/09	4	4	4	5		Dr. Regnier is one of the most gentle dentists in the city, however, he has a temper problem and sometimes DOES NOT handle his stress well and can be very abusive, on a bad day. Catch him on a good day, and he's the best. I lost sleep for 1.5 years after a "misunderstanding" and then changed dentists.	Respond
8/4/09	4	3	5	5		I think Dr. Regnier is fantastic. He has a calm and gentle manner and always is able to answer my questions. The negative reviews on this site are not very specific and only offer insults with no concrete reasons.	Respond
7/29/09	1	1	1	1		Todd is a terrible dentist. This man's work fell apart. Six days after he filled my tooth the filling fell out!!! When I called him he was short, ignorant, and rude. He didn't want to take responsibility for his poor, unprofessional work, and he hung up on me. Now I have had to pay again (no insurance) to fix the same tooth at a different office. Todd is a terrible dentist who has a reputation of doing fast, poor quality work. Beware. Paid/Co-pay: $340	Respond
6/24/09	1	1	1	1		Paid/Co-pay: $677	Respond
3/24/09	1	1	1	1			Respond
3/16/09	1	1	3	5		Dr Regnier may know what he's doing and do it well, but he's completely unprofessional. He spoke to myself and his staff with arrogance and rudeness and was an hour behind in his scheduling. This man should have his licence revoked.	Respond
3/13/09	5	5	5	5		Goes out of his way to do what he can with the budget you have. If a tooth can be saved he has been known to preform magic. He is very talented.	Respond
2/14/09	2	2	1	3	*	I suppose this dentist treats all his female patients well, however I'm not female and found him short with his answers, and he made me feel like I was bothering him when I would ask a question. I want to understand where my thousand dollars was spent and I recieved vauge, unconcise answers. I was left feeling like I spent more than I should have without a adequate explaination. I will never return to that abrasive office.	Respond
2/6/09	5	5	5	5	*	Very friendly, funny, careful and prompt. Nice staff. Been seeing him for years and will keep doing so!	Respond
12/26/08	5	5	5	5		I consider myself lucky to have this dentist. He is very skillful and intelligent, and really cares about your comfort. He also has a great sense of humour.	Respond
11/18/08	5	5	5	5		Have been to this dentist many times and would not see any one else. Great	Respond

manners and cares about your situation

- Rating left by a registered user

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1. Dr. Richard Chambers - Victoria
2. Dr. Jerry Nanos - Victoria
3. Dr. Kirk Matheson - Victoria